

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 768 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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V P NIMKAR

Versus

STATE OF GUJARAT  
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Appearance:

MR JF SHAH for Petitioner

M/S PATEL ADVOCATES for Respondent No. 1, 2  
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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 16/06/2000

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner has prayed for certain directions to the State Government in the Health and Social Welfare Department and the Director of Health, Medical Services & Medical Education (Medical Branch) for fixing the petitioner's pay in Class II post with effect from 19.1.1976 and to pay him the arrears of salary and

also to fix the amount of pension and death-cum-retirement gratuity and to pay the arrears of pension and gratuity together with interest at 12% p.a.

2. The petitioner's case is that the petitioner was recruited to the Gujarat Medical Services Class III and thereafter he was promoted to Gujarat Medical Services Class II, but he was not given the benefit of deemed date of promotion and, therefore, he had filed an appeal before the Gujarat Civil Services Tribunal (appeal No. 88/87). At the hearing of the said appeal, the concerned Government representative pointed out that the petitioner was already granted deemed date of promotion to Gujarat Medical Services Class II with effect from 19.1.1976 as per the Government Resolution dated 15.11.1980. This fact was brought to the notice of the petitioner at the hearing of the appeal before the Tribunal on 9.10.1987. Hence, the appellant's advocate submitted an application for permission to withdraw the appeal with a request that the appellant may be given the benefit of pay fixation in Class II cadre. The appeal was accordingly disposed of on 20.11.1987 as per the order at Annexure "B". Since the petitioner's pay was not fixed in the pay scale of Class II service, the petitioner filed the present petition. In the meantime, the petitioner retired from service with effect from 31.7.1987.

3. Affidavit in reply has been filed on behalf of respondent No. 2. It is surprising that although the affidavit was affirmed as far back as on 27.3.1991, the same was neither tendered before the Court nor was a copy thereof served on the learned counsel for the petitioner. It is only when the matter is called out today that a copy of the affidavit has been served on the learned counsel for the petitioner. Since the petition has been pending for hearing since last 12 years, the Court did not accept the request of the learned counsel for the petitioner for adjournment for filing a rejoinder affidavit.

4. The learned counsel for the petitioner further states that the petitioner is suffering from cancer and the only benefit that he will get if this petition is allowed is revision of his pension and arrears of difference of pension and gratuity.

5. Mr KT Dave, learned AGP appearing for the respondents has submitted on the basis of the affidavit in reply that the petitioner is not entitled to get any of the reliefs prayed for because the petitioner had never worked in Gujarat Medical Services Class II after

promotion. It is submitted that the petitioner had never reported for duty after promotion and, therefore, he was not entitled for any salary for the period commencing from 14.10.1977 to 31.7.1987.

6. Having heard the learned counsel for the parties, it appears to the Court that since the petitioner is not pressing his claim for arrears of difference of salary till the date of his retirement, the defence urged on behalf of the respondents that the petitioner had not rendered any service between 14.10.1977 and 31.7.1987 cannot be of any consequence. As far as the question of fixation of his pension with effect from 19.1.1976 is concerned, the Government Resolution dated 15.11.1980 (Annexure "A" to the petition) specifically states that the petitioner (Sr.No. 23 in the Resolution) was promoted to Gujarat Medical Services Class II with effect from 19.1.1976 and that the deemed date of promotion i.e. 19.1.1976 was given for the purposes of pay fixation, pension and gratuity. In other words, the petitioner was not to be given the benefit of arrears of difference of salary on account of pay fixation in the higher cadre i.e. Gujarat Medical Services Class II. Hence, for fixing the petitioner's pay in the pay scale of Gujarat Medical Services Class II as on 19.1.1976, the petitioner's conduct between 1977 and 1987 was not relevant. If the petitioner did not render any services between October, 1977 and June, 1987, the relevant rules regarding fixation of salary and pension may operate, but as far as the fixation of pay as on 19.1.1976 is concerned, for the said purpose all that was required to be seen was the Government Resolution dated 15.11.1980 giving the petitioner deemed date of promotion with effect from 19.1.1976 and the other relevant particulars in the petitioner's service book such as the petitioner's pay immediately prior to 19.1.1976 and working out of the increments on that basis in accordance with the rules. If the petitioner's pay as on 19.1.1976 is appropriately fixed, the consequential benefits flowing therefrom in accordance with the rules will also have to be given to the petitioner.

7. In view of the above discussion, the petition is partly allowed. The respondents are directed to fix the petitioner's pay in Gujarat Medical Services Class II as on 19.1.1976 which was the date with effect from which he was granted deemed date of promotion in Class II as per the Government Resolution dated 15.11.1980 (Annexure "A" to the petition). This shall be done within one month from the date of receipt of a certified copy of this judgment or the writ of this Court, whichever is earlier

and within two months of such fixation of pay in Gujarat Medical Services Class II, the respondents shall refix the petitioner's pension and gratuity and pay the petitioner arrears of difference of pension and arrears of difference of gratuity. The entire exercise shall be completed within three months from the date of receipt of a certified copy of this judgment or the writ of this Court, whichever is earlier.

8. It is clarified that this Court would like to record that the Court would have awarded interest for the delay in fixation, but the same is not being awarded only because of the petitioner's conduct in not reporting for service between October, 1977 and July, 1987 and also the delay in filing the petition.

Rule is made partly absolute to the aforesaid extent. There shall be no order as to costs.

Direct Service is permitted.

June 16, 2000 (M.S. Shah, J.)  
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